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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 PEARLITHA MARTIN,

Case No. 2:18-cv-02438-JAD-GWF

7 Plaintiff,

8 v.

ORDER

9 WHITTLESEA,

Defendant.

10 This matter is before the Court on Plaintiff's Application for Leave to Proceed *in Forma*
11 *Pauperis* (ECF No. 1), filed on December 28, 2018.

12 **I. Application to Proceed *In Forma Pauperis***

13 Plaintiff filed this instant action and attached a financial affidavit to her application and
14 complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant
15 to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result,
16 Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

17 **II. Screening the Complaint**

18 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
19 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to
20 dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which
21 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is
22 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be
23 dismissed for failure to state a claim upon which relief may be granted "if it appears beyond a
24 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to
25 relief." *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be
26 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual
27 scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, "a finding of factual
28 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly

1 incredible, whether or not there are judicially noticeable facts available to contradict them.”
2 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under §
3 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing
4 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
5 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

6 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832
7 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik*
8 *v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, a liberal construction may not be
9 used to supply an essential element of the claim absent from the complaint. *Bruns v. Nat’l*
10 *Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673
11 F.2d 266, 268 (9th Cir. 1982)).

12 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
13 complaint for failure to state a claim upon which relief can be granted. Review under Rule
14 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
15 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short
16 and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.
17 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not
18 require detailed factual allegations, it demands “more than labels and conclusions” or a
19 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937,
20 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true
21 all well-pled factual allegations contained in the complaint, but the same requirement does not
22 apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of
23 action, supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where
24 the claims in the complaint have not crossed the line from plausible to conceivable, the
25 complaint should be dismissed. *Twombly*, 550 U.S. at 570.

26 **III. Instant Complaint**

27 Plaintiff’s one-page complaint consists of the single factual allegation that she was
28 harassed at her place of employment. Plaintiff states “Federal” in her complaint. This is not an

1 adequate allegation of jurisdiction and venue. She does not allege the legal theory under which
2 she is pursuing her claim and she does not provide any factual basis for her claim other than a
3 single sentence. This is simply inadequate and the Court cannot conduct a screening of
4 Plaintiff's complaint.

5 **a. Subject Matter Jurisdiction**

6 Federal district courts are courts of limited jurisdiction, deriving their power to hear cases
7 from specific congressional grants of jurisdiction. *United States v. Sumner*, 226 F.3d 1005, 1009
8 (9th Cir. 2000). Limited jurisdiction means that federal courts (1) possess only that power
9 authorized by the Constitution or a specific federal statute and (2) do not have jurisdiction over a
10 matter simply because the alleged wrong occurred in the same city, county, or state in which the
11 court sits. *See* U.S. Const. art. III, § 2, cl. 1. Generally, subject matter jurisdiction may derive
12 from diversity of the parties, which are "civil actions where the matter in controversy exceeds the
13 sum or value of \$75,000 ... and is between citizens of different States," or from claims involving
14 a federal question, which are "civil actions arising under the Constitution, laws, or treaties of the
15 United States." *See* 28 U.S.C. § 1331; 28 U.S.C. § 1332.

16 Rule 8(a)(1) of the Federal Rules of Civil Procedure states that a "claim for relief must
17 contain ... a short plain statement of the grounds for the court's jurisdiction." Fed. R. Civ. P.
18 8(a)(1). The burden of proving jurisdiction rests on the party asserting jurisdiction. *See McNutt*
19 *v. Gen. Motors Acceptance Corp.* 298 U.S. 178, 182–83 (1936). Plaintiff does not state the
20 grounds for the Court's jurisdiction in her complaint nor does the complaint contain allegations
21 demonstrating that the Court has jurisdiction.

22 **b. Failure to State a Claim**

23 **i. Harassment/Title VII of the Civil Rights Act of 1964**

24 It appears that Plaintiff seeks to pursue a claim of workplace harassment. Her complaint
25 does not sufficiently allege the legal theory under which she is pursuing her claim, nor does she
26 provide an adequate factual basis for her claim. Plaintiff may be attempting to set forth a claim
27 under Title VII of the Civil Rights Act of 1964 ("Title VII"), which is a federal law that makes it
28 "an unlawful employment practice for an employer ... to discriminate against any individual with

1 respect to his compensation, terms, conditions, or privileges of employment, because of such
2 individual's race, color, religion, sex, or national origin.” 42 U.S.C. §2000e-2.

3 As an initial matter and to the extent that Plaintiff intends to set forth a claim for harassment
4 under Title VII, a plaintiff must first exhaust administrative remedies in order to bring a Title VII
5 claim in district court. *Sommolino v. United States*, 255 F.3d 704, 707 (9th Cir.2001) (citing 42
6 U.S.C. § 2000e-16(c)). Exhaustion of administrative remedies under Title VII requires that the
7 complainant file a timely charge with the EEOC, thereby allowing the agency time to investigate
8 the charge. *Lyons v. England*, 307 F.3d 1092, 1104 (9th Cir. 2002); *See* 42 U.S.C. § 2000e-5(b).
9 Plaintiff failed to allege that she has exhausted her administrative remedies.

10 Discrimination can take the form of negative employment action, or it may arise when an
11 employer harbors a hostile or abusive work environment. *U.S. E.E.O.C. v. Wedco, Inc.*, 65 F.
12 Supp. 3d 993, 1002 (D. Nev. 2014). “Title VII is violated when “the workplace is permeated with
13 ‘discriminatory intimidation, ridicule, and insult’ that is ‘sufficiently severe or pervasive to alter
14 the conditions of the victim's employment.’” *Id.* (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477
15 U.S. 57, 65, 67, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986)). To prevail on a hostile work environment
16 claim under Title VII, the plaintiff must show: “(1) that he was subjected to verbal or physical
17 conduct of a racial or sexual nature; (2) that the conduct was unwelcome; and (3) that the conduct
18 was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create
19 an abusive work environment.” *Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 640 (9th Cir.2003).
20 A plaintiff must also demonstrate that the employer is liable for the harassment. *Wedco*, 65 F.
21 Supp. 3d at 1002.

22 Plaintiff fails to allege a cognizable claim. She fails to allege any legal theory and fails to
23 allege that this Court has subject matter jurisdiction over her claim. She merely alleges that she
24 was harassed. To the extent Plaintiff intended to file a Title VII harassment claim, she failed to
25 allege the harassment was based on race, color, religion, sex, or national origin or that her employer
26 was liable for such harassment. The Court, therefore, will dismiss Plaintiff's complaint with leave
27 to amend. Plaintiff is advised that she must provide the court with a proper factual and legal basis
28 for her claims in her amended complaint.


1 If Plaintiff elects to proceed in this action by filing an amended complaint, she is informed
2 that the court cannot refer to a prior pleading in order to make her amended complaint complete.
3 Local Rule 15–1 requires that an amended complaint be complete in itself without reference to any
4 prior pleading. This is because, as a general rule, an amended complaint supersedes the original
5 complaint. *See Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011); *see Loux v. Rhay*,
6 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended complaint, the original pleading
7 no longer serves any function in the case. Therefore, in an amended complaint, as in an original
8 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
9 Plaintiff is advised that litigation will not commence upon the filing of an amended complaint.
10 Rather, the Court will need to conduct an additional screening of the amended complaint pursuant
11 to 28 U.S.C. § 1915(e). If Plaintiff fails to file an amended complaint or fails to cure the
12 deficiencies identified above, the Court will recommend that the complaint be dismissed with
13 prejudice. Accordingly,

14 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis* is
15 **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars
16 (\$400.00).

17 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to
18 conclusion without the necessity of prepayment of any additional fees or costs or the giving of
19 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the
20 issuance of subpoenas at government expense.

21 **IT IS FURTHER ORDERED** that Plaintiff's complaint be **dismissed** without prejudice
22 with leave to amend. Plaintiff shall have until **August 30, 2019** to file an amended complaint
23 correcting the noted deficiencies.

24 Dated this 29th day of July, 2019.

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26 
27 GEORGE FOLEY, JR.
28 UNITED STATES MAGISTRATE JUDGE